IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

RSA.No. 495 of 2007(A)

AS.79/2000 of PRINCIPAL SUB COURT,PARAVUR
OS.65/1999 of MUNSIFF COURT, PERUMBAVOOR
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: APPELLANT/APPELLANT/DEFENDANT

THANKAMMA, AGED 75,
W/O PADMANABHAN, NADUKKUDY PARAMBIL,
PONJASSERRY, ARACKAPPADY VILLAGE,
KUNNATHUNADU TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS: RESPONDENT/PLAINTIFF

SHEELA, D/O SUBRAMANIAN,
THACHANGATTU HOUSE, ALLAPRA,
VENGOLA VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.RAJESH VIJAYAN(CAVEATOR)

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.1046/2007 IN R.S.A.NO.495/07

24.9.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A NO. 495 OF 2007

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Dated this the 24th day of September, 2007

JUDGMENT

Defendant in O.S.65/1999 on the file of Munsiff Court, Perumbavoor is the appellant. Plaintiff is the respondent. Respondent instituted the suit claiming a decree for realisation of Rs.88,000/- with interest at 12% per annum. Appellant is the mother in-law of the respondent. Case of the respondent is that her second son was conducting a business at Chembarikky, which was started in 1990 and for the purpose of improving that business appellant borrowed Rs.28,000/- in cash and obtained 15 sovereigns valued at Rs.60,000/- on 25.5.1996 and executed Ext.A2 promissory note agreeing to repay the amount with 12% interest and inspite of demand, the amount was not repaid and therefore respondent is entitled to realise the same. Appellant in the written statement denied the transaction and contended

that she did not borrow any amount and hence she is not liable to pay the amount. Learned Munsiff on the evidence of Pws.1 to 3, Dws. 1 and 2 and Exts.A1 to A4 granted a decree for realisation of Rs.88,000/- with 12% interest from 25.5.1996 till realisation holding that appellant received Rs.28,000/- in cash and also 15 sovereigns valued at Rs.60,000/- as claimed by the respondent and executed Ext.A2 promissory note agreeing to repay the same on demand. Appellant challenged the decree and judgment before Sub Court, North Paravur in A.S.79/2000. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. On hearing learned counsel appearing for appellant and respondent, the following substantial questions of law are formulated.

1. When respondent restricted his claim for interest till the date of institution of the suit at Rs.12,000/-, whether courts below were justified

in granting interest from the date of transaction on 25.5.1996?

2. Whether the granting of failure interest at 12% is sustainable?

3. Though learned counsel appearing for appellant challenged the findings of first appellate court and the trial court that Ext.A2 promissory note was executed agreeing to repay the amount received earlier on demand, on the facts the trial court and first appellate court found that appellant in fact received Rs.28,000/- in cash and also 15 sovereigns, the value of which was fixed at Rs.60,000/-. That finding of fact arrived at by the courts below cannot be interfered in exercise of the powers of this court under section 100 of Code of Civil Procedure. The finding of fact by the first appellate court on that aspect is final.

4. The argument of learned counsel appearing for appellant is that when respondent had given up the interest portion of the principal amount except Rs.12,000/- till the date of the suit for

which court fee was paid the courts below were not justified in granting interest at 12% per annum from 25.5.1996, the date of the transaction.

5. It is not disputed that when the plaint was presented before the trial court, in order to avoid payment of court fee for the entire interest portion of the principal amount till the date of institution of the suit respondent had given up a portion of the interest restricting the claim for interest at Rs.12,000/-. Unfortunately this aspect was omitted to be taken note of by the courts below. Eventhough respondent is entitled to get interest at 12% from the date of the transaction, when she had already given up her claim for a portion of the interest due and restricted the claim to Rs.12,000/-, the decree granted by courts below directing payment of interest from 25.5.1996 is unsustainable. Apart from the principal amount respondent is only entitled to get Rs.12,000/- as interest upto the date of institution of the suit.

6. From the date of the suit till the date of

the decree interest is at the discretion of the court. From the date of the decree, interest could only be as provided under Section 34 of Code of Civil Procedure. If it is a commercial transaction, plaintiff is entitled to get interest at the contract rate and if not interest cannot exceed at6% from the date of the decree. Courts below did not consider this aspect and granted interest at 12% per annum throughout. As pointed out by learned counsel appearing for appellant, what was contended by respondent in the plaint was that the amount was borrowed by appellant not for her purpose but for the business of the second son of the respondent. It cannot be said that it is a commercial transaction as canvassed by learned counsel appearing for respondent. Therefore after the date of the decree interest could only be at 6%. But in view of the agreed rate of interest in Ext.A2, I do not find it necessary to interfere with the discretion exercised by the courts below on the interest from the date of the suit till the

date of the decree.

The appeal is allowed in part. The decree granted by the trial court and confirmed by first appellate court is modified as follows:- Respondent is entitled to a decree for realisation of Rs.1,00,000/- with interest at 12% per annum on Rs.88,000/- from 1.2.1999 till 15.12.1999, the date of the decree and thereafter at 6% per annum till realisation and cost of the suit in the trial court.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A..NO.163 /01

JUDGMENT

25th SEPTEMBER,2007